

DOCUMENT RESUME

02911 - [A2073149]

[Real Estate Expenses, Attorney's Fees]. B-185548. July 19, 1977. 3 pp. + enclosure (1 pp.).

Decision re: James B. O'Brien; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: Federal Government: Central Personnel Management (805).

Organization Concerned: Internal Revenue Service.

Authority: 5 U.S.C. 5724a. OMB Circular A-56, sec. 4.2c, 48 Comp. Gen. 469. B-185975 (1977). B-163203 (1969). B-165280 (1969).

The protester appealed a denial of his claim for reimbursement of unitemized legal fees incurred incident to the purchase of a residence in connection with a permanent change of station. The employee was required to furnish a statement of the legal services itemized by the attorney as the settlement of the transaction occurred in 1971. The claim denial was sustained. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185548

DATE: July 19, 1977

MATTER OF: James B. O'Brien - Real Estate Expenses -
Attorneys Fees

DIGEST: Employee claims reimbursement for unitemized legal fees. Since decision in Matter of George W. Lay, B-185976, April 27, 1977, 56 Comp. Gen. ____ is prospective to residence transactions in which settlement occurs on or after April 27, 1977, employee is required to furnish statement of legal services itemized by attorney where settlement of transaction occurred in 1971.

This action concerns an appeal dated January 26, 1977, by Mr. James B. O'Brien, from the denial by our Claims Division of his claim for reimbursement of legal fees incurred incident to the purchase of a residence in connection with a permanent change of station.

The record indicates that on July 21, 1971, Mr. O'Brien, an employee of the Internal Revenue Service, was authorized to transfer from New York, New York, to Miami, Florida. On October 26, 1971, he purchased a residence in Hollywood Hills, Florida, a suburb of Miami. A closing statement from the law offices of Goodman and Holtzman indicates that Mr. O'Brien was charged \$291 for title insurance. However, a letter dated February 26, 1973, from attorney Sylvan Holtzman states that of the \$291 charge, \$215.27 represents attorneys fees, which Mr. O'Brien is presently claiming. Although Mr. Holtzman did not itemize the services rendered, Mr. O'Brien claims that such services consisted of an original title search, clearing technical issues on title, and preparation of mortgage instruments and closing statements. A statement dated October 26, 1971, from the Hollywood Federal Savings and Loan Association discloses, however, that Mr. O'Brien was charged \$225 by Hollywood Federal for a title examination and preparation of documents. Mr. O'Brien's claim for reimbursement of the \$215.27 legal fee was administratively disallowed on the grounds that it was a "second attorneys fee," and therefore not reimbursable under 48 Comp. Gen. 469 (1969).

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Mr. O'Brien reclaimed the \$215.27 legal fee and the matter was referred to our Claims Division, which by Settlement Certificate No. Z-2630420, dated January 19, 1977, denied the claim on the basis that no itemization of the fee had been provided by the attorney who rendered the services. In appealing the settlement, Mr. O'Brien contends that the Claims Division did not address all of the issues concerning his claim. In particular, he contends that the retaining of an attorney to represent his interests is a reimbursable relocation expense, notwithstanding that his attorney may duplicate legal services performed on behalf of the mortgagee. Mr. O'Brien disputes the application of our decision in 48 Comp. Gen. 469 (1969) (cited as B-165740 in the submission) to his situation based upon the absence of a contractual agreement between himself and the attorneys for the savings and loan association. He thus concludes that since no attorney-client relationship existed between such attorneys and himself, and since he did not voluntarily retain them to protect his own interests, denial of his claim based upon 48 Comp. Gen. 469 (1969) was erroneous since he did not employ a second attorney in connection with the purchase of his new residence.

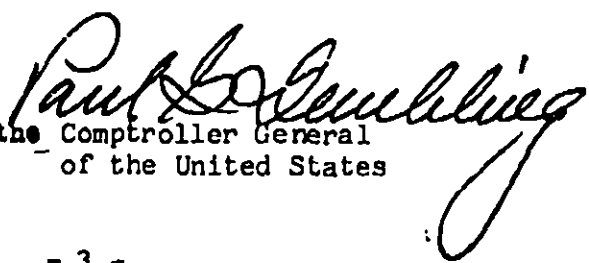
Statutory authority for reimbursement of the legal expenses of residence transactions of transferred employees is found at 5 U.S.C. 5724a (1970). Regulations implementing that authority, at the time of Mr. O'Brien's transfer were contained in section 4.2c of Office of Management and Budget Circular A-56, August 17, 1971. In our recent decision in the Matter of George W. Lay, B-185976, April 27, 1977, 56 Comp. Gen. ___, we reviewed the policy concerning the extent to which legal fees may be reimbursed. In that decision, we held that necessary and reasonable legal fees and costs, except for the fees and costs of litigation, incurred by reason of the purchase or sale of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. Pursuant to that decision, the primary consideration in determining whether certain legal services may be reimbursed is whether it is customary to obtain such services in the locality of the residence transaction. Further, it should be noted that the operative concept in this regard is the rendition of legal services to or on behalf of the employee, not the existence of a contractual relationship between the employee and the person

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performing the service. Thus, under our decision in Lay, if the examination of title and preparation of documents is customarily performed in the location of the transaction by the lending institution, as, for example, when the purchaser agrees to such performance in connection with his application for a mortgage loan, a legal fee for an additional rendition of such services to the employee by a third party may not be reimbursed since the additional legal service would be neither necessary nor reasonable in view of the locality practice. If, however, it were the local custom to obtain an independent title opinion, then the legal expenses therefor would properly be reimbursable. Since our decision in Lay will be applied prospectively only to cases in which settlement of the transaction occurs on or after April 27, 1977, the present matter must be determined in accordance with the previously applicable laws and decisions.

As noted above, our Claims Division denied the present claim for failure to itemize the legal fee for which reimbursement is requested. We have previously required itemization by the attorney of legal fees on the grounds that a listing of the services provided and the charges therefor was necessary to ensure that reimbursement be authorized only for certain enumerated services. B-153203, March 24, 1969 and B-165280, December 31, 1969. Although our decision in Lay modified those decisions with respect to settlements occurring on or after April 27, 1977, they remain applicable where settlement occurred prior to that date. Since settlement in this case occurred on October 26, 1971, and since the attorney rendering the legal services did not itemize his fee, the determination of our Claims Division is sustained. If, upon submission of an itemized statement, it appears that the attorney duplicated the legal services provided by the savings and loan association, pursuant to 48 Comp. Gen. 469, supra, reimbursement thereof may not be made, since, as noted above, the operative concept regarding reimbursement of legal fees is the rendition of legal services to the employee or on his behalf, rather than the employment of specific attorneys.

Accordingly, we sustain the denial of this claim by the Claims Division.


For the Comptroller General
of the United States

JUN 10 1977

Director, Claims Division

For the
Comptroller General Paul G. Dembling

James B. O'Brien - Attorneys Fees - B-185548-O.M.

Returned herewith is your file Z-2630420 forwarded on February 9, 1977, for our consideration of Mr. O'Brien's appeal from your denial of his claim for attorneys fees incident to the purchase of a new residence. That denial is sustained by our decision of today, B-185548, copy attached. Your attention is invited, however, to our decision in Matter of George W. Lay, B-185976, April 27, 1977, in which we substantially modified the policy concerning reimbursement of attorneys fees incident to the residence transactions of transferred employees where settlement of the transaction occurs on or after April 27, 1977.

Attachments